



June 3, 1999

Ms. Bertha Bailey Whatley
Fort Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR99-1542

Dear Ms. Whatley:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124588.

The Fort Worth Independent School District (the "district"), which you represent, received a request for various categories of information, including information that was addressed in a prior ruling from this office, Open Records Letter No. 98-3216 (1998). You state that you have released to this requestor the same information that we told the district to release in that prior ruling. We also advised you in Open Records Letter No. 98-3216 (1998) that certain information at issue is protected from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g and by sections 552.026 and 552.101 of the Government Code. It is our understanding that you have appropriately withheld this information from release to the requestor. You also have told the requestor that the district does not have certain requested information. Open Records Decision No. 362 at 2 (1983) (governmental body does not have to supply information which does not exist).

You state that the district has responsive records other than those already released to the requestor and other than those that this office has already determined to be confidential. You ask if these remaining responsive records may be withheld from disclosure under section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

In Open Records Letter No. 98-3216 at 4 (1998), this office agreed that you had shown that litigation was reasonably anticipated concerning a student. You refer to your 1998 correspondence to this office and assert that litigation is still reasonably anticipated for the

same reasons we found it to be reasonably anticipated in December 1998. We agree that, assuming there has been no settling of the underlying issues, the district has shown that at this time it still reasonably anticipates litigation.

We have reviewed the records at issue and agree that they are related to the reasonably anticipated litigation. Thus, the records that you submitted to this office as responsive to the request may be withheld from disclosure under section 552.103 of the Government Code. In making this ruling, we assume that the information at issue was not part of the information we told you to either release or to withhold in Open Records Letter No. 98-3216 (1998) and also that the opposing party in the anticipated litigation has not already had access to this information. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124588

Encl. Submitted documents

cc: Mr. Bill Lane
Attorney at Law
204 W. Central Avenue
Fort Worth, Texas 76106
(w/o enclosures)